

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1092**

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**Introduced by Assembly Member Emmerson**  
**(Coauthors: Assembly Members Karnette and Levine)**

February 23, 2007

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An act to amend Section 11713.3 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1092, as amended, Emmerson. Recreational vehicles.

*Existing law prohibits a manufacturer, manufacturer branch, distributor, or distributor branch that is licensed under the Vehicle Code from engaging in certain conduct involving a dealer having a franchise for the sale of new vehicles or vehicle parts.*

*For a dealer and manufacturer agreement involving recreational vehicles, this bill would additionally prohibit a manufacturer from failing or refusing to provide a written dealer agreement that complies with statutory franchise requirements.*

*Because a violation of this prohibition would be a crime, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law regulates, in part, the terms and enforcement of recreational vehicle franchise agreements.~~

~~This bill would express the intent of the Legislature to enact appropriate legislation to provide for the equitable resolution of disputes between recreational vehicle manufacturers and recreational vehicle dealerships.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 11713.3 of the Vehicle Code is amended*  
2     *to read:*

3     11713.3. It is unlawful and a violation of this code for ~~any a~~  
4     manufacturer, manufacturer branch, distributor, or distributor  
5     branch licensed under this code to do ~~any of~~ the following:

6     (a) To refuse or fail to deliver in reasonable quantities and within  
7     a reasonable time after receipt of an order from a dealer having a  
8     franchise for the retail sale of any new vehicle sold or distributed  
9     by the manufacturer or distributor, any new vehicle or parts or  
10    accessories to new vehicles as are covered by the franchise, if the  
11    vehicle, parts, or accessories are publicly advertised as being  
12    available for delivery or actually being delivered. This subdivision  
13    is not violated, however, if the failure is caused by acts or causes  
14    beyond the control of the manufacturer, manufacturer branch,  
15    distributor, or distributor branch.

16    (b) To prevent or require, or attempt to prevent or require, by  
17    contract or otherwise, any change in the capital structure of a  
18    dealership or the means by or through which the dealer finances  
19    the operation of the dealership, if the dealer at all times meets any  
20    reasonable capital standards agreed to by the dealer and the  
21    manufacturer or distributor, and if a change in capital structure  
22    does not cause a change in the principal management or have the  
23    effect of a sale of the franchise without the consent of the  
24    manufacturer or distributor.

25    (c) To prevent or require, or attempt to prevent or require, a  
26    dealer to change the executive management of a dealership, other  
27    than the principal dealership operator or operators, if the franchise  
28    was granted to the dealer in reliance upon the personal  
29    qualifications of that person.

30    (d) (1) Except as provided in subdivision (t), to prevent or  
31    require, or attempt to prevent or require, by contract or otherwise,

1 any dealer, or any officer, partner, or stockholder of any dealership,  
2 the sale or transfer of any part of the interest of any of them to any  
3 other person. No dealer, officer, partner, or stockholder shall,  
4 however, have the right to sell, transfer, or assign the franchise,  
5 or any right thereunder, without the consent of the manufacturer  
6 or distributor except that the consent shall not be unreasonably  
7 withheld.

8 (2) (A) For the transferring franchisee to fail, prior to the sale,  
9 transfer, or assignment of a franchisee or the sale, assignment, or  
10 transfer of all, or substantially all, of the assets of the franchised  
11 business or a controlling interest in the franchised business to  
12 another person, to notify the manufacturer or distributor of the  
13 franchisee's decision to sell, transfer, or assign the franchise. The  
14 notice shall be in writing and shall include all of the following:

15 (i) The proposed transferee's name and address.

16 (ii) A copy of all of the agreements relating to the sale,  
17 assignment, or transfer of the franchised business or its assets.

18 (iii) The proposed transferee's application for approval to  
19 become the successor franchisee. The application shall include  
20 forms and related information generally utilized by the  
21 manufacturer or distributor in reviewing prospective franchisees,  
22 if those forms are readily made available to existing franchisees.  
23 As soon as practicable after receipt of the proposed transferee's  
24 application, the manufacturer or distributor shall notify the  
25 franchisee and the proposed transferee of any information needed  
26 to make the application complete.

27 (B) For the manufacturer or distributor, to fail, on or before 60  
28 days after the receipt of all of the information required pursuant  
29 to subparagraph (A), or as extended by a written agreement  
30 between the manufacturer or distributor and the franchisee, to  
31 notify the franchisee of the approval or the disapproval of the sale,  
32 transfer, or assignment of the franchise. The notice shall be in  
33 writing and shall be personally served or sent by certified mail,  
34 return receipt requested, or by guaranteed overnight delivery  
35 service that provides verification of delivery and shall be directed  
36 to the franchisee. ~~Any~~ A proposed sale, assignment, or transfer  
37 shall be deemed approved, unless disapproved by the franchisor  
38 in the manner provided by this subdivision. If the proposed sale,  
39 assignment, or transfer is disapproved, the franchisor shall include

1 in the notice of disapproval a statement setting forth the reasons  
2 for the disapproval.

3 (3) In ~~any~~ *an* action in which the manufacturer's or distributor's  
4 withholding of consent under this subdivision or subdivision (e)  
5 is an issue, whether the withholding of consent was unreasonable  
6 is a question of fact requiring consideration of all the existing  
7 circumstances.

8 (e) To prevent, or attempt to prevent, a dealer from receiving  
9 fair and reasonable compensation for the value of the franchised  
10 business. ~~There shall be no~~ A transfer or assignment of the dealer's  
11 franchise *shall not occur* without the consent of the manufacturer  
12 or distributor, which consent shall not be unreasonably withheld  
13 or conditioned upon the release, assignment, novation, waiver,  
14 estoppel, or modification of ~~any~~ *a* claim or defense by the dealer.

15 (f) To obtain money, goods, services, or any other benefit from  
16 any other person with whom the dealer does business, on account  
17 of, or in relation to, the transaction between the dealer and that  
18 other person, other than for compensation for services rendered,  
19 unless the benefit is promptly accounted for, and transmitted to,  
20 the dealer.

21 (g) To require a dealer to prospectively assent to a release,  
22 assignment, novation, waiver, or estoppel that would relieve any  
23 person from liability to be imposed by this article or to require any  
24 controversy between a dealer and a manufacturer, distributor, or  
25 representative, to be referred to any person other than the board,  
26 if the referral would be binding on the dealer. This subdivision  
27 does not, however, prohibit arbitration before an independent  
28 arbitrator.

29 (h) To increase prices of motor vehicles that the dealer had  
30 ordered for private retail consumers prior to the dealer's receipt  
31 of the written official price increase notification. A sales contract  
32 signed by a private retail consumer is evidence of each such order.  
33 In the event of manufacturer price reductions, the amount of the  
34 reduction received by a dealer shall be passed on to the private  
35 retail consumer by the dealer if the retail price was negotiated on  
36 the basis of the previous higher price to the dealer. Price reductions  
37 apply to all vehicles in the dealer's inventory that were subject to  
38 the price reduction. Price differences applicable to new model or  
39 series motor vehicles at the time of the introduction of new models  
40 or series shall not be considered a price increase or price decrease.

1 This subdivision does not apply to price changes caused by either  
2 of the following:

3 (1) The addition to a motor vehicle of required or optional  
4 equipment pursuant to state or federal law.

5 (2) Revaluation of the United States dollar in the case of a  
6 foreign-make vehicle.

7 (i) To fail to pay to a dealer, within a reasonable time following  
8 receipt of a valid claim by a dealer thereof, any payment agreed  
9 to be made by the manufacturer or distributor to the dealer by  
10 reason of the fact that a new vehicle of a prior year model is in the  
11 dealer's inventory at the time of introduction of new model  
12 vehicles.

13 (j) To deny the widow or heirs designated by a deceased owner  
14 of a dealership, the opportunity to participate in the ownership of  
15 the dealership or successor dealership under a valid franchise for  
16 a reasonable time after the death of the owner.

17 (k) To offer ~~any~~ refunds or other types of inducements to ~~any~~  
18 a person for the purchase of new motor vehicles of a certain  
19 line-make to be sold to the state or ~~any~~ a political subdivision  
20 thereof of this state without making the same offer to all other  
21 dealers in the same line-make within the relevant market area.

22 (l) To modify, replace, enter into, relocate, terminate or refuse  
23 to renew a franchise in violation of Article 4 (commencing with  
24 Section 3060) of Chapter 6 of Division 2.

25 (m) To employ a person as a representative who has not been  
26 licensed pursuant to Article 3 (commencing with Section 11900)  
27 of Chapter 4 of Division 5.

28 (n) To deny ~~any~~ a dealer the right of free association with any  
29 other dealer for ~~any~~ a lawful purpose.

30 (o) (1) To compete with a dealer in the same line-make  
31 operating under an agreement or franchise from a manufacturer  
32 or distributor in the relevant market area.

33 (2) A manufacturer, branch, or distributor or any entity that  
34 controls or is controlled by, a manufacturer, branch, or distributor,  
35 shall not, however, be deemed to be competing in the following  
36 limited circumstances:

37 (A) Owning or operating a dealership for a temporary period,  
38 not to exceed one year. However, after a showing of good cause  
39 by a manufacturer, branch, or distributor that it needs additional  
40 time to operate a dealership in preparation for sale to a successor

1 independent franchisee, the board may extend the time period. The  
2 board shall extend the time period until December 31, 2002, for  
3 any manufacturer that meets all of the following requirements:

4 (i) The manufacturer has no more than 25 franchisees in the  
5 state and those franchisees collectively operate dealership facilities  
6 in at least 15 counties of the state.

7 (ii) All of the dealership facilities operated by the manufacturer's  
8 franchisees in the state trade exclusively in the manufacturer's  
9 line-make.

10 (iii) No fewer than one-half of the manufacturer's franchisees  
11 in the state own and operate two or more dealership facilities in  
12 their assigned areas of responsibility.

13 (iv) The manufacturer holds a temporary ownership interest in  
14 no more than two dealerships in the state that are located in the  
15 relevant market area of any other franchisee of the same line-make  
16 not owned, in whole or part, by the manufacturer.

17 (B) Owning an interest in a dealer as part of a bona fide dealer  
18 development program that satisfies all of the following  
19 requirements:

20 (i) The sole purpose of the program is to make franchises  
21 available to persons lacking capital, training, business experience,  
22 or other qualities ordinarily required of prospective franchisees  
23 and the dealer development candidate is an individual who is  
24 unable to acquire the franchise without assistance of the program.

25 (ii) The dealer development candidate has made a significant  
26 investment subject to loss in the franchised business of the dealer.

27 (iii) The program requires the dealer development candidate to  
28 manage the day-to-day operations and business affairs of the dealer  
29 and to acquire, within a reasonable time and on reasonable terms  
30 and conditions, beneficial ownership and control of a majority  
31 interest in the dealer and disassociation of any direct or indirect  
32 ownership or control by the manufacturer, branch, or distributor.

33 (C) Owning a wholly owned subsidiary corporation of a  
34 distributor that sells motor vehicles at retail, if, for at least three  
35 years prior to January 1, 1973, the subsidiary corporation has been  
36 a wholly owned subsidiary of the distributor and engaged in the  
37 sale of vehicles at retail.

38 (3) (A) ~~Every~~ A manufacturer, branch, and distributor that owns  
39 or operates a dealership in the manner described in subparagraph  
40 (A) of paragraph (2) shall give written notice to the board, within

1 10 days, each time it commences or terminates operation of a  
2 dealership and each time it acquires or divests itself of an  
3 ownership interest.

4 (B) ~~Every~~A manufacturer, branch, and distributor that owns an  
5 interest in a dealer in the manner described in subparagraph (B)  
6 of paragraph (2) shall give written notice to the board, annually,  
7 of the name and location of each dealer in which it has an  
8 ownership interest.

9 (p) To unfairly discriminate among its franchisees with respect  
10 to warranty reimbursement or authority granted to its franchisees  
11 to make warranty adjustments with retail customers.

12 (q) To sell vehicles to persons not licensed under this chapter  
13 for resale.

14 (r) To fail to affix an identification number to ~~any~~ a park trailer,  
15 as described in Section 18009.3 of the Health and Safety Code,  
16 that is manufactured on or after January 1, 1987, and that does not  
17 clearly identify the unit as a park trailer to the department. The  
18 configuration of the identification number shall be approved by  
19 the department.

20 (s) To dishonor a warranty, rebate, or other incentive offered  
21 to the public or a dealer in connection with the retail sale of a new  
22 motor vehicle, based solely upon the fact that an autobroker  
23 arranged or negotiated the sale. This subdivision ~~shall~~ *does* not  
24 prohibit the disallowance of that rebate or incentive if the purchaser  
25 or dealer is ineligible to receive the rebate or incentive pursuant  
26 to any other term or condition of a rebate or incentive program.

27 (t) To exercise a right of first refusal or any other right requiring  
28 a franchisee or any owner thereof to sell, transfer, or assign to the  
29 franchisor, or to ~~any~~ a nominee of the franchisor, all or any material  
30 part of the franchised business or of the assets thereof unless all  
31 of the following requirements are met:

32 (1) The franchisor authorizes the franchisor to exercise a right  
33 of first refusal to acquire the franchised business or assets thereof  
34 in the event of a proposed sale, transfer, or assignment.

35 (2) The franchisor gives written notice of its exercise of the  
36 right of first refusal no later than 45 days after the franchisor  
37 receives all of the information required pursuant to subparagraph  
38 (A) of paragraph (2) of subdivision (d).

39 (3) The sale, transfer, or assignment ~~being~~ *that is* proposed  
40 relates to not less than all or substantially all of the assets of the

1 franchised business or to a controlling interest in the franchised  
2 business.

3 (4) The proposed transferee is neither a family member of an  
4 owner of the franchised business, nor a managerial employee of  
5 the franchisee owning 15 percent or more of the franchised  
6 business, nor a corporation, partnership, or other legal entity owned  
7 by the existing owners of the franchised business. For purposes of  
8 this paragraph, a “family member” means the spouse of an owner  
9 of the franchised business, the child, grandchild, brother, sister,  
10 or parent of an owner, or a spouse of one of those family members.  
11 Nothing contained in this paragraph limits the rights of the  
12 franchisor to disapprove a proposed transferee as provided in  
13 subdivision (d).

14 (5) Upon the franchisor’s exercise of the right of first refusal,  
15 the consideration paid by the franchisor to the franchisee and  
16 owners of the franchised business shall equal or exceed all  
17 consideration that each of them were to have received under the  
18 terms of, or in connection with, the proposed sale, assignment, or  
19 transfer, and the franchisor shall comply with all the terms and  
20 conditions of the agreement or agreements to sell, transfer, or  
21 assign the franchised business.

22 (6) The franchisor shall reimburse the proposed transferee for  
23 ~~any~~ expenses paid or incurred by the proposed transferee in  
24 evaluating, investigating, and negotiating the proposed transfer to  
25 the extent those expenses do not exceed the usual, customary, and  
26 reasonable fees charged for similar work done in the area in which  
27 the franchised business is located. These expenses include, but are  
28 not limited to, legal and accounting expenses, and expenses  
29 incurred for title reports and environmental or other investigations  
30 of any real property on which the franchisee’s operations are  
31 conducted. The proposed transferee shall provide the franchisor a  
32 written itemization of those expenses, and a copy of all  
33 nonprivileged reports and studies for which expenses were incurred,  
34 if any, within 30 days of the proposed transferee’s receipt of a  
35 written request from the franchisor for that accounting. The  
36 franchisor shall make payment within 30 days of exercising the  
37 right of first refusal.

38 (u) (1) To unfairly discriminate in favor of ~~any~~ a dealership  
39 owned or controlled, in whole or part, by a manufacturer or  
40 distributor or an entity that controls or is controlled by the



1 manufacturer or distributor. Unfair discrimination includes, but is  
2 not limited to, the following:

3 (A) The furnishing to ~~any~~ a franchisee or dealer that is owned  
4 or controlled, in whole or part, by a manufacturer, branch, or  
5 distributor of ~~any~~ of the following:

6 (i) ~~Any~~ A vehicle that is not made available to each franchisee  
7 pursuant to a reasonable allocation formula that is applied  
8 uniformly, and ~~any~~ a part or accessory that is not made available  
9 to all franchisees on an equal basis when there is no reasonable  
10 allocation formula that is applied uniformly.

11 (ii) ~~Any~~ A vehicle, part, or accessory that is not made available  
12 to each franchisee on comparable delivery terms, including the  
13 time of delivery after the placement of an order. Differences in  
14 delivery terms due to geographic distances or other factors beyond  
15 the control of the manufacturer, branch, or distributor shall not  
16 constitute unfair competition.

17 (iii) ~~Any~~ A information obtained from a franchisee by the  
18 manufacturer, branch, or distributor concerning the business affairs  
19 or operations of any franchisee in which the manufacturer, branch,  
20 or distributor does not have an ownership interest. The information  
21 includes, but is not limited to, information contained in financial  
22 statements and operating reports, the name, address, or other  
23 personal information or buying, leasing, or service behavior of  
24 any dealer customer, and ~~any~~ other information ~~which~~ *that*, if  
25 provided to a franchisee or dealer owned or controlled by a  
26 manufacturer or distributor, would give that franchisee or dealer  
27 a competitive advantage. This clause does not apply if the  
28 information is provided pursuant to a subpoena or court order, or  
29 to aggregated information made available to all franchisees.

30 (B) Referring a prospective purchaser or lessee to a dealer ~~in~~  
31 ~~which~~ *that* a manufacturer, branch, or distributor has an ownership  
32 interest, unless the prospective purchaser or lessee resides in the  
33 area of responsibility assigned to that dealer or the prospective  
34 purchaser or lessee requests to be referred to that dealer.

35 (2) Nothing in this subdivision shall be interpreted to prohibit  
36 a franchisor from granting a franchise to prospective franchisees  
37 or assisting those franchisees during the course of the franchise  
38 relationship as part of a program or programs to make franchises  
39 available to persons lacking capital, training, business experience,

1 or other qualifications ordinarily required of prospective  
2 franchisees.

3 (v) (1) To access, modify, or extract information from a  
4 confidential dealer computer record, as defined in Section  
5 11713.25, without obtaining the prior written consent of the dealer  
6 and without maintaining administrative, technical, and physical  
7 safeguards to protect the security, confidentiality, and integrity of  
8 the information.

9 (2) Paragraph (1) does not limit a duty that a dealer may have  
10 to safeguard the security and privacy of records maintained by the  
11 dealer.

12 (w) (1) To use electronic, contractual, or other means to prevent  
13 or interfere with any of the following:

14 (A) The lawful efforts of a dealer to comply with federal and  
15 state data security and privacy laws.

16 (B) The ability of a dealer to do either of the following:

17 (i) Ensure that specific data accessed from the dealer's computer  
18 system is within the scope of consent specified in subdivision (v).

19 (ii) Monitor specific data accessed from or written to the dealer's  
20 computer system.

21 (2) Paragraph (1) does not limit a duty that a dealer may have  
22 to safeguard the security and privacy of records maintained by the  
23 dealer.

24 (x) (1) *To fail or refuse to provide a written dealer agreement*  
25 *that complies with the requirements of Section 331 between the*  
26 *dealer and the manufacturer.*

27 (2) *Paragraph (1) applies only to a dealer and a manufacturer*  
28 *agreement involving recreational vehicles, as defined in subdivision*  
29 *(a) of Section 18010 of the Health and Safety code.*

30 ~~(x)~~

31 (y) As used in this section, "area of responsibility" is a  
32 geographic area specified in a franchise that is used by the  
33 franchisor for the purpose of evaluating the franchisee's  
34 performance of its sales and service obligations.

35 ~~SECTION 1. It is the intent of the Legislature to enact~~  
36 ~~appropriate legislation to provide for the equitable resolution of~~  
37 ~~disputes between recreational vehicle manufacturers and~~  
38 ~~recreational vehicle dealerships.~~

39 *SEC. 2. No reimbursement is required by this act pursuant to*  
40 *Section 6 of Article XIII B of the California Constitution because*

1 *the only costs that may be incurred by a local agency or school*  
2 *district will be incurred because this act creates a new crime or*  
3 *infraction, eliminates a crime or infraction, or changes the penalty*  
4 *for a crime or infraction, within the meaning of Section 17556 of*  
5 *the Government Code, or changes the definition of a crime within*  
6 *the meaning of Section 6 of Article XIII B of the California*  
7 *Constitution.*

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